84-1150

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**IN THE**

**SUPREME COURT OF THE UNITED STATES**

October Term, 1984

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Karole K. Jensen, as
Administratrix of the
Estates of Sylvia Brown
and Michael Clark, Deceased,

Petitioner,

v.

Virgil L. Conrad, et al,

Respondent.

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On Writ of Certiorari to
the United States Court of Appeals
for the Fourth Circuit

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# APPENDIX
# VOLUME II

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COUNSEL OF RECORD ARE:

O. Fayrell Furr, Jr.
LAW OFFICES OF O. FAYRELL FURR, JR.
Post Office Box 2909
Myrtle Beach, SC 29201

ATTORNEY FOR PETITIONER

William C. Hubbard
Joel H. smith
NELSON, MULLINS, GRIER &
SCARBOROUGH
Post Office Box 11070
Columbia, SC 29211

LEAD COUNSEL
ATTORNEYS FOR RESPONDENTS
Commissioner and Members
of the State Board

Wilburn Brewer, Jr.
James L. Werner
NEXSEN, PRUET, JACOBS
& POLLARD
Post Office Box 2426
Columbia, SC 29202

ATTORNEYS FOR RESPONDENTS
County Director and
County Board Members

George Beighley
RICHARDSON, PLOWDEN,
GRIER & HOWSEER
1340 Pickens Street
Columbia, SC 29201

ATTORNEY FOR RESPONDENT
Patricia Jones

Charles E. Hill, Jr.
TURNER, PADGET, GRAHAM
& LANEY
Post Office Box 1473
Columbia, SC 29201

ATTORNEY FOR RESPONDENT
Mary Williams

David Robinson, II
ROBINSON, McFADDEN, MOORE,
POPE, WILLIAMS, TAYLOR
& BRAILSFORD
Post Office Box 944
Columbia, SC 29202

ATTORNEY FOR RESPONDENT
Barbara Locklair

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

ANDERSON DIVISION

CIVIL ACTION NO 82-2059-14

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|---|---|
| Karole K. Jensen, as Administratrix of the Estate of Michael Clark, Deceased, Plaintiff, vs. Virgil L. Conrad, in his individual and official capacity as Commissioner of the Department of Social Services; Kenneth Pryor, individually and in his official capacity as Director of the Anderson County Department of Social Services; Dawn Hawkins, individually and in her official capacity as Program Director for Human Services of the Anderson County Department of Social Services; Susan Straup and Charie Ann | ORDER |

Jenkins, individually and in their official capacities as social workers with the Anderson County Department of Social Services;

Defendants.

This matter is before the Court on motion by Defendant Virgil L. Conrad seeking summary judgment pursuant to Fed.R.Civ.P. 56(b). Based on this Court's reasoning in its Orders of June 16, 1983 and August 24, 1983, and the affidavit submitted by Defendant, this motion is granted.

AND IT IS SO ORDERED.

William W. Wilkins, Jr.
United States District Judge

Greenville, SC.

August, 24, 1983.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CARCLINA

ANDERSON DIVISION

CIVIL ACTION NO. 82-2059-14

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| Karole K. Jensen, as Administratrix of the Estate of Michael Clark, Deceased, Plaintiff, vs. Virgil L. Conrad, in his individual and official capacity as Commissioner of the Department of Social Services; Kenneth Pryor, individually and in his official capacity as Director of the Anderson County Department of Social Services; Dawn Hawkins, individually and in her official capacity as Program Director for Human Services of the Anderson County Department of Social Services; Susan Straup and Charie Ann | ORDER |

Jenkins, individually and in their official capacities as social workers with the Anderson County Department of Social Services;

Defendants.

Finding that there is no just reason for delay, the Clerk is directed, pursuant to Fed.R.Civ.P. 54(b), to enter final judgment in favor of Virgil L. Conrad and the members of the Boards of the State and Anderson County Department of Social Services.

AND IT IS SO ORDERED.

William W. Wilkins, Jr.
United States District Judge

Greenville, SC.

August, 24, 1983.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

ANDERSON DIVISION

CIVIL ACTION NO. 82-2059-14

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| Karole K. Jensen, as Administratrix of the Estate of Michael Clark, Deceased, Plaintiff, vs. Virgil L. Conrad, in his individual and official capacity as Commissioner of the Department of Social Services; Kenneth Pryor, individually and in his official capacity as Director of the Anderson County Department of Social Services; Dawn Hawkins, individually and in her official capacity as Program Director for Human Services of the Anderson County Department of Social Services; Susan Straup and Charie Ann | ORDER |

Jenkins, individually and in their official capacities as social workers with the Anderson County Department of Social Services;

Defendants.

MOTION FOR

RECONSIDERATION

This matter is before the Court on Plaintiff's motion for leave to file an Amended Complaint pursuant to Fed.R.Civ.P. 15(a). Also, pursuant to Fed.R.Civ.P. 59(e), Plaintiff seeks to alter or amend this Court's Order of June 16, 1983, granting summary judgment in favor of all members of the Boards of the State and Anderson County Departments of Social Services. Finding no merit to either motion, both are denied.

Plaintiff's initial Complaint was filed on August 16, 1982. Shortly thereafter, various defendants sought dismissal pursuant to Fed.R.Civ.P. 12(b)(6) alleging Plaintiff had failed to state a cause of action. At the conclusion of a hearing held by this Court to consider these motions, Plaintiff was instructed to file more detailed allegations. Upon receipt of these allegations, the parties were notified that the Court would construe Defendants' pending motions to dismiss as motions for summary judgment. Both sides were then provided a full opportunity to file supporting affidavits and supplemental briefs. This Court subsequently granted summary judgment based on the affidavits submitted.

In essence, Plaintiff now seeks to

escape summary judgment by filing new pleadings.[1] Also, Plaintiff offers additional affidavits and exhibits not previously filed in response to the motion for summary judgment which are now alleged to raise a genuine issue of fact. However, it is clear that summary judgment cannot be circumvented in such a manner.

Once summary judgment is granted against a party, the case cannot be reopened by filing new pleadings unless the judgment is first set aside or vacated. 6 Wright & Miller, Federal Practice and Procedure: Civil Section 1489; See also, Sachs v. Snider, 631

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[1]Given the fact that this Court previously ordered Plaintiff to file additional pleadings, this would constitute Plaintiff's third Amended Complaint in this case.

F.2d 350 (4th Cir. 1980); Chrysler Corp. v. Commercial Lakeshore Finance Corp., 66 F.R.D. 607 (E.D.Wis. 1975). Moreover, summary judgment will generally not be altered or vacated on the basis of supplemental exhibits or affidavits filed after summary judgment is granted. See DeLong Corp. v. Raymond International, Inc., 622 F.2d 1135 (3rd Cir. 1980); Clarke v. Montgomery Ward & Co., 298 F.2d 346 (4th Cir. 1962). This is particularly true in a case such as this where the party seeking to amend judgment has made absolutely no showing that the additional evidence offered could not have been timely submitted in the exercise of reasonable diligence.[2]

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[2]Plaintiff was given ample opportunity to submit responsive briefs, exhibits and affidavits before summary judgment was granted. Had more time been necessary, Plaintiff was certainly free to petition the Court for an extension. No such motion was made.

Consequently, Plaintiff is denied leave to file an Amended Complaint and this Court's prior Order granting summary judgment is reaffirmed.[3]

In reaffirming this Order, further discussion is warranted in two areas. (1) Defendants' motion for summary judgment raised difficult issues concerning good faith immunity from suit under Harlow v. Fitzgerald, 102 S.Ct. 2727 (1982), which were resolved by this Court after exhaustive consideration. This Court has since discovered additional authority to support its conclusions on these issues. (2) Recently, on reconsideration, Judge Clyde H. Hamilton of this District,

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[3]To the extent that Plaintiff's motion to alter or amend the judgment can be construed to be based on allegations of error, this Court finds no merit in Plaintiff's claim.

dismissed a claim based on facts very similar to the facts involved in this case due to a lack of state action. See Jensen v. Conrad, C.A. 82-2061-15 (D.S.C. Supp. Order July 18, 1983). Consequently, it is now incumbent on this Court to elaborate on its reasoning for not dismissing this case on the same basis.

IMMUNITY

Summary judgment was granted in favor of all members of the Boards of the State and Anderson County Departments of Social Services based in part on the Harlow good faith immunity rule.[4] In Harlow, the United States

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[4]The court also granted summary judgment based on the merits of the case prior to considering Defendants' immunity claim.

Supreme Court held that public officials sued in their individual capacity for damages under 42 U.S.C. Section 1983 are entitled to good faith immunity from suit unless their actions violated "clearly established" law. This Court found that the alleged failure of Department of Social Services Board members to provide protective service caseworkers with effective training in a specific area of expertise did not allege a violation of clearly established federal or state law. However, the claim that caseworkers personally assigned to a child abuse case failed to complete a proper investigation was found to allege a violation of clearly established state law. Moreover, this Court held that a stat official who acts in violation of clearly established state law which nas a direct bearing on his official

conduct, may not assert good faith immunity as a defense to a subsequent Section 1983 action.[5]

The question of whether a state official who acts in violation of

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[5]This Court did, of course, recognize that a mere violation of state law would not constitute a cause of action under Section 1983. To establish a claim under Section 1983, it is necessary to prove a violation of constitutional or federal statutory rights. In this regard, the Court found the claim that protective service caseworkers had acted with deliberate indifference in failing to protect a child from obvious and preventable dangers alleged a violation of the due process clause of the fourteenth amendment. See Doe v. New York City Department of Social Services, 649 F.2d 134 (2d Cir. 1981). Moreover, the fact that a constitutional right to such protection was not clearly established at the time of the child's injuries was held not to constitute a defense to the claim since the caseworkers were allegedly acting in violation of clearly established state law.

clearly established state law may be entitled to the protection of good faith immunity was specifically addressed in Williams v. Treen, 671 F.2d 892 (5th Cir. 1982).[6] After thorough analysis of the policy objectives which prompted recognition of the good faith immunity defense, the Fifth Circuit ruled that state officials who violate clearly established state law are not entitled to this protection. Specifically, that court stated:

> We believe that prison "...officials are charged with knowledge of their own prison regulations." Chavis v. Rowe, 643 F.2d 1281, 1289 (7th Cir. 1981) and

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[6]The Court stated: "We are therefore confronted with what appears to be a question of first impression in this Circuit. We must determine whether 1983 defendants are entitled to the protection of a qualified immunity when there has been a violation of clearly established state law." Williams v. Treen, 671 F.2d at 899.

that they "may not take solace in ostrichism." Id. If an official's conduct contravenes his own state's explicit and clearly established regulations, a subjective belief in the lawfulness of his action is per se unreasonable.... To hold otherwise would be to encourage official ignorance of the law.

We of course recognize that a Section 1983 plaintiff must allege a deprivation of a federally protected right in order to set forth a prima facie case, Maine v. Thiboutot, 448 U.S. 1, 100 S.Ct. 2502, 65 L.Ed. 2d 555 (1980); violation of a state law alone does not give rise to a cause of action under Section 1983. Bills v. Henderson, 631 F.2d 1287 (6th Cir. 1980). We believe that our conclusion regarding the immunity defense in this case is entirely consistent with this well established principle. The Section 1983 cause of action in this case is based upon the fact that the federal constitutional rights of these inmates were violated.... At this juncture, the only question before the court is whether the defendant officials are entitled to the special protections of a qualified immunity. We hold that when a state official violates the constitutional rights of a citizen, and in so doing also violates clearly established state law which enforces those rights, the

EDITOR'S NOTE

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> defendant official is not entitled to an immunity which is based upon reasonable good faith.

Williams vs. Treen, 671 F.2d at 899-900.

STATE ACTION

In examining the issue of whether state action exists in this case, it is important to carefully consider the alleged basis for liability. On June 23, 1980, Michael Clark, a three-year-old child, was apparently beaten to death by the live-in boyfriend of Michael's mother. Four months previously, the Anderson County Department of Social Services had received a report of child abuse in Michael's family. However, the

protective service caseworkers assigned to investigate that incident allegedly failed to conduct a proper abuse investigation in violation of specific requirements of state law. Failing to make contacat with Michael's family, the Complaint alleges that the protective service caseworkers simply classified the report as "unfounded" and the case was officially closed. Consequently, due to alleged deliberate indifference on the part of state officials, Michael was abandoned to a clearly abusive home life, making subsequent injury virtually inevitable.[7]

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[7]Because of the current posture of this case, the Court is required to view the facts in a light most favorable to Plaintiff. Of course, this should not be construed to indicate that the Court has reached any conclusions concerning the merits of the claim against the caseworkers.

Under these circumstances, because Michael was killed by a private party not under state supervision or control, it might be argued that there was no state action which significantly contributed to his death. Certainly state officials did not affirmatively act to harm him. However, such an argument ignores the fact that had the protective service caseworkers properly performed their duties in accordance with state law, Michael's death could possibly have been prevented. In other words, state officials may have been responsible for Michael's death due to their conscious inaction rather than because of any affirmative conduct.

It is an established principle of law under Section 1983 that state officials may be held liable for damages

resulting from their failure to perform official duties. In this regard, police officials are liable for purposeful failure to protect individuals who, through the exercise of constitutional rights, are endangered by resulting mob violence. See Downie v. Powers, 193 F.2d 760, 764-65 (10th Cir. 1951).[8]

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[8] In Downie the Court Stated:

> One charged with the duty of keeping the peace [under state law] cannot be an innocent bystander where the constitutionally protected rights of persons are being invaded. He must stand on the side of law and order or be counted among the mob.... But the officials are the keepers, not the insurers of the peace in the community. Diligent and conscientious effort is all that is required....
>
> When all the evidence bearing upon the action or inaction of the city officials is considered in its totality we think it presented a factual issue.... (Emphasis added.)

Downie v. Powers, 193 F.2d at 764.

Furthermore, state officials must enforce the law in a non-discriminatory manner. For example, they may be held liable under Section 1983 for purposeful failure to protect unpopular minorities. See Smith v. Ross 482 F.2d 33 (6th Cir. 1973); Catlette v. United States, 132 F.2d 902 (4th Cir. 1943).[9] Therefore, the conscious failure of state officials to perform statutorily imposed duties without justification in itself constitutes state action.

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[9] In this regard, the Court stated:

> We agree with appellants that a law enforcement officer can be liable under Section 1983 when by his inaction he fails to perform a statutorily imposed duty to enforce the laws equally and fairly, and thereby denies equal protection to persons legitimately exercising rights guaranteed them under state or federal law. Acts of omission are actionable in this context to the same extent as are acts of commission. (Emphasis added.)

It is clear, however, that the mere fact that some state action was involved in Michael's death does not entirely resolve the state action issue. In order for an injury to be actionable under Section 1983, there must have been sufficient state action so that state officials may be fairly held responsible. Defendants have argued, based on Martinez v. California, 444 U.S. 277 (1980), that Plaintiff has

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Smith v. Ross, 482 F.2d at 36-37.

In Catlette, The Court stated: "It is true that a denial of equal protection has hitherto been largely confined to affirmative acts of discrimination. The Supreme Court, however, has already taken the position that culpable official State inaction may also constitute a denial of equal protection." Catlette v. United States, 132 F.2d at 907.

failed to allege sufficient state action to maintain a claim under Section 1983.

In Martinez, a Section 1983 action was brought against members of the California Parole Board on behalf of a 15-year-old girl who was murdered by a parolee five months after he was released from prison. This claim was based on the allegation that the Board's action in granting parole, despite the parolee's history as a sex offender, had caused the loss of the girl's life without due process of law. In dismissing this case for a lack of state action, the Supreme Court stated: "[D]ecedent's death is too remote a consequence of the parole officers' action to hold them responsible under federal civil rights law." Martinez v. California, 444 U.S. at 285. However, this conclusion appeared to be based

primarily on the finding that "the parole board was not aware that appellants' decedent, as distinguished from the public at large, faced any special danger."[10] Id.

Of course, the facts of the present case are readily distinguishable from the facts in Martinez. Unlike the parole officers in Martinez, the protective service caseworkers in this case were allegedly aware that particular individuals (i.e., the children in the Clark family), "as distinguished from the public at large," faced special danger (i.e., physical abuse by their

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[10]The Court also considered the fact that the parolee was not an agent of the Parole Board and the murder had occurred five months after his release. Martinez v. California, 444 U.S. at 285.

guardians).[11] Moreover, the caseworkers were hired specifically to protect children such as Michael from this particular "special danger." As public officials, they were required to perform specific statutory procedures designed to prevent child abuse. SeeS. C. Code Ann. Section 20-7-650(C). Allegedly, these procedures were not followed and a proper investigation was never completed. Under these circumstances, it would simply be unreasonable to characterize Michael's death as "too remote a consequence" of the caseworkers' alleged failure to perform their official duties. Viewing the

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[11]This distinction was recognized by Judge Phillips in a recent Fourth Circuit opinion. Fox v. Custis, No. 82-1144, slip op. at 10 (4th Cir. July 13, 1983).

facts in a light most favorable to Plaintiff, Michael's death was a direct and highly predictable consequence of official inaction for which the caseworkers may be fairly held accountable under Section 1983.[12]

It is, of course, clear that a claim may not be asserted under Section 1983 on the basis of state action alone. To establish a claim under

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[12]It is also important to recognize that another significant distinction can be made between the facts in Martinez and the facts in this case. In Martinez, the Parole Board was performing a discretionary risk-assessing function. A strong argument can be made that in order to provide the members of the Parole Board with the necessary flexibility of judgment to properly perform such a function, they must be given significant protection from suit. However, in the present case it is alleged that the caseworkers failed to perform mandatory functions. In performing mandatory functions,

Section 1983, it is also necessary to prove a violation of federal constitutional or statutory rights. Defendants argue that, even in the presence of state action, Plaintiff's claim must be dismissed due to a failure to allege a violation of federal rights.

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flexibility of judgment is not generally required and, therefore, immunity from suit is not justified.

The mandatory abuse investigation required under South Carolina law is designed to collect information concerning suspected abuse cases. This information may subsequently be utilized by the Department of Social Services in performing discretionary functions, such as deciding whether to attempt to terminate parental rights. When making this sort of determination, a strong argument could be made that the Department of Social Services also needs protection from lawsuits in order to function properly.

In this regard, Defendants cite Bowers v. DeVito, 686 F.2d 616 (7th Cir. 1982), which held generally there is no right to state protection against criminal conduct. Consequently, since there is no "constitutional duty [on the state] to provide such protection its failure to do so is not actionable under Section 1983." Bowers v. DeVito, 686 F.2d at 618. However, in recently accepting this principle in Fox v. Custis, No. 82-1144, slip op. at 9-11, the Fourth Circuit also recognized an important exception. Although the state has no constitutional duty to protect members of the general public from random criminal violence, a constitutional right to affirmative protection by the state may arise out of special relationships "created or assumed by the state in respect of

particular persons." Fox v. Custis, No. 82-1144, slip op. at 9.

Unfortunately, the Court in Fox did not specifically define the type of "special relationship" which may give rise to a right to protection vindicable under Section 1983.[13] However, it is difficult to imagine a relationship more special than that assumed by the state with respect to children reported to the Department of Social Services as

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[13] In this regard, the Court stated:

> Without attempting a general definition of the special relationship required to give rise to a right, vindicable under Section 1983, to affirmative protection by the state, it suffices to observe that none is claimed or appears here. The claimants here were simply members of the general public living in the free society, and having no special custodial or other relationship with the state. (Emphasis added.)

Fox v. Custis, No. 82-1144, slip op. at 10.

suspected victims of abuse. This is particularly clear in light of the exhaustive statutory procedures adopted by the state specifically mandating a rapid and detailed investigation of every report. Based on these statutory procedures, it is clear that this state has assumed a special protective relationhip with respect to such children.

It is important to realize, however, the mere failure of protective service caseworkers to follow these procedures and offer appropriate protection due to negligence or inadvertence, even in light of this special relationship, does not state a claim under Section 1983. To establish liability under Section 1983, Plaintiff must prove that Defendants acted with "deliberate indifference." See Doe v.

New York City Department of Social Services, 649 F.2d at 134. In essence, this requires a showing that Defendants, with actual knowledge that Michael faced a pervasive and unreasonable risk of harm, failed to provide reasonable protection due to a conscious lack of concern for his safety.[14] Conduct of this type, in violation of statutory law and a duty of protection clearly assumed

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[14]Although "deliberate indifference" may be presumed from violations of specific statutory law or acts of gross negligence, this is merely a permissible inference or presumption. As such, the inference is sufficient to avoid entry of summary judgment or directed verdict. However, it does not result in a shifting of the burden of proof or require any specific response from Defendants. In the final analysis, a jury would have to conclude that Defendants acted with actual knowledge and a conscious lack of concern in order to return a verdict in Plaintiff's favor.

by the state, is sufficiently offensive to traditional notions of fundamental fairness and substantial justice to violate the due process clause of the fourteenth amendment.

Consequently, this Court's prior Order of June 16, 1983 is reaffirmed.

AND IT IS SO ORDERED.

s/William W. Wilkins, Jr.
United States District Judge

Greenville, S. C.
August 24, 1983.

by the state, is sufficiently offensive to traditional notions of fundamental fairness and substantial justice to violate the due process clause of the fourteenth amendment.

Consequently, this Court's prior Order of June 16, 1983 is reaffirmed.

AND IT IS SO ORDERED.

s/William W. Wilkins, Jr.
United States District Judge

Greenville, S. C.
August 24, 1983.

ARTICLE 7

INTAKE

SUBARTICLE 1

GENERAL PROVISIONS

Section 20-7-480. Purpose.

Recognizing that abused and neglected children in South Carolina need protection, it is the purpose of this article to save them from injury and harm by establishing an effective reporting system and encouraging the reporting of children in need of protection; by establishing an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate; by establishing fair and equitable procedures, compatible with due process of law to

intervene in family life with due regard to the safety and welfare of all family members and by establishing an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

HISTORY: 1981 Act No. 11, Section 1, eff May 19, 1981.

Section 20-7-490. Definitions.

When used in this article and unless the specific context indicates otherwise:

(A) "Child" means a person under the age of eighteen.

(B) "Abused or neglected child means a child whose physical or mental health or welfare is harmed or threatened with harm, as defined by items (C) and (D) of this section, by the acts or omissions of his

parent, guardian or other person responsible for his welfare.

(C) "Harm to a child's health or welfare can occur when the parent, guardian or other person responsible for his welfare:

(1) Inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment, but exlcuding corporal punishment or physical discipline which meets each of the following guidelines:

(a) The physical agression must be administered by a parent or person in loco parentis.

(b) It must be perpetrated for the sole purpose of restraining or correcting the child.

(c) The force or violence of the discipline must be reasonable in

manner and moderate in degree.

(d) The force and violence of the discipline must not have brought about permanent or lasting damage to the child.

(e) The behavior of the parent must not be reckless or grossly negligent.

(2) Commits or allows to be committed against the child a sexual offense as defined by the law of this State.

(3) Fails to supply the child with adequate food, clothing, shelter, education as required under Article 1 of Chapter 65 of Title 59, or health care though financially able to do so or offered financial or other reasonable means to do so. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law.

(4) Abandons the child, as defined

by Section 20-7-1570.

(5) Encourages, condones or approves the commission of delinquent acts by the child and the commission of the acts are shown to be the result of the encouragement, condonation or approval.

(D) "Threatened harm" means a substantial risk of harm, as defined by item (C).

(E) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home, institution or agency, or other person legally responsible for the child's welfare in a residential setting.

(F) "Physical injury" means death, disfigurement or impairment of any bodily organ.

(G) "Mental injury" means a substantial impairment of the intellectual, psychological or emotional capacity of a child as evidenced by inhumane, or unconscionable

acts and conduct. Provided, nothing herein shall be construed as prohibiting a person responsible for a child's welfare from imposing reasonable restrictions deemed necessary by such person for the intellectual, psychological or emotional well-being of the child by any of the following means or methods:

(1) Restrictions relating to attendance at amusements, concerts, social events or activities, or theaters;

(2) restrictions on amount of exposure to secular activities such as television, extra-curricular school activities or community recreational activities;

(3) instructions, directions, or mandates relating to public or private elementary or secondary education or attendance at churches or other places of worship.

(H) "Institutional child abuse and neglect" means situations of known or suspected child abuse or neglect where the person

responsible for the child's welfare is the employee of a public or private residential home, institution or agency.

(I) "Protective Services Unit" means the unit established within the Department of Social Services which shall have prime responsibility for state efforts to stregthen and improve the prevention, identification and treatment of child abuse and neglect.

(J) "Subject of the report" means any person reported under this chapter, including any child or parent, guardian, or other person responsible for the child's welfare.

(K) "Suspected report" means all initial reports of child abuse or neglect received pursuant to this article.

(L) "Unfounded reort" means a report made pursuant to this chapter for which there is no probable cause to believe that the child is abused or neglected. For the purposes of this article, it is presumed

that all reports are unfounded unless the local child protective agency determines otherwise.

(M) "Indicated report" means a report of child abuse or neglect supported by facts which warrant a finding that abuse or neglect is more likely than not to have occurred.

(N) "Probable cause" means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this article is abused or neglected.

(O) "Local child protective service agency" in a county or contiguous counties having prime responsibility for local efforts to strengthen and improve the prevention, identification and treatment of child abuse and neglect.

(P) "Child protective investigation" means any inquiry conducted by the local child protective service agency in response

to a report of child abuse or neglect made pursuant to this article.

HISTORY: Act No. 71 Section 1, eff May 19, 1981; 1982 Act No. 398, Section 21, eff June 7, 1982.

SUBARTICLE 3

IDENTIFICATION

SEC.

20-7-500. Persons or families needing assistance encouraged to seek it.

20-7-510. Persons to report.

20-7-520. Mandatory reporting to medical examiner or coroner; postmortem examinations.

20-7-530. Photographs and x-rays.

20-7-540. Immunity from liability.

20-7-550. Abrogation of privileged

communication.

20-7-560. Penalties.

20-7-570. (Renumbered).

20-7-580. (Renumbered).

20-7-590. (Renumbered).

Section 20-7-500. Persons or families needing assistance encouraged to seek it.

Any person seeking assistance in meeting child care responsibilites may use the services and facilities established by this article, including the single statewide telephone number and local child protective servicess where available. Such persons shall be

referred to appropriate community resources or agencies, notwithstanding whether the problem presented involves child abuse or neglect as defined by this article.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

Section 20-7-510. Persons to report.

(A) Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher or counselor, social or public assistance worker, child care worker in any day care center or child caring institution,

police or law enforcement officer or any judge having reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect is required to report or cause a report to be made in accordance with this section.

(B) Except as provided in (A) of this section, any other person who has reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse and neglect may report in accordance with this section.

(C) Reports of child abuse or neglect made pursuant to this section may be made orally, by telephone or otherwise to the county department of social services, or in the alternative, to a law enforcement agency in the county where the child resides or is found.

(1) Where reports are made pursuant to this section to a law enforce-

ment agency, it shall notify the county department of social services of its response to the report at the earliest possible time.

(2) Where a county or contiguous counties have established local child protective services, pursuant to Section 20-7-650, county department of social services shall immediately transfer reports pursuant to this section to the service.

HISTORY: 1981 Act No. 71, eff May 19, 1981.

Section 20-7-520. Mandatory reporting to medical examiner or coroner; postmortem examinations.

Any person required under subsection (a) of Section 20-7-510 to report cases of suspected child abuse or neglect, including workers of the local child protective service agency, who has reason to believe that a child has died

as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner or coroner. Any other person who has reason to believe that a child has died as a result of child abuse or neglect may report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his findings to the appropriate law enforcement agency, circuit solicitor's office, the local child protective service agency or county department of social services, and, if the institution making a report is a hospital, to the hospital.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

Section 20-7-530. Photographs and x-rays.

Any person required to report under

Section 20-7-510 may take, or cause to be taken color photographs of the areas of trauma visible on a child who is the subject of a report and, if medically indicated, cause to be performed a radiological examination of the child without the consent of the child's parents or guardians. All photographs, negatives, and copies of them shall be sent to the appropriate local child protective service agency or county department of social services at the time a report pursuant to Section 20-7-510 is made, or as soon thereafter as possible.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

Section 20-7-540. Immunity from liability.

Any person required or permitted to report pursuant to this article or who participates in judicial proceedings

resulting therefrom, acting in good faith, shall be immune from civil and criminal liability which might otherwise result by reason of such actions. In all such civil or criminal proceedings good faith shall be rebuttably presumed.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

Section 20-7-550. Abrogation of privileged communication.

The privileged quality of communication between husband and wife and any professional person and his patient and client, except that between attorney and client or priest and pentinent, is abrogated and shall not constitute grounds for failure to report or the exclusion of evidence in any civil child protective proceeding resulting from a report pursuant to this article.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

Section 20-7-560. Penalties.

Any person required to report a case of child abuse or neglect, or any person required to perform any other function under this article, who knowingly fails to do so, or any person who threatens or attempts to intimidate a witness shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or be imprisoned for not more than six months, or both.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

SUBARTICLE 5

INTERVENTION BY LAW ENFORCEMENT AGENCIES

SEC.
20-7-600. Taking child into custody;

notice to parents or others; release; transportation; peace officer's records.
20-7-610. Emergency protective custody.
20-7-620. Temporary detention of children.
20-7-630. Juvenile intake and probation services; review of recommendations as to intake; secrecy of files.

Section 20-7-600. Taking child into custody; notice to parents or others; release; transportation; peace officers' records.

(a) When a child found violating any law or ordinance, or whose surroundings are such as to endanger his welfare, is taken into custody such taking into custody shall not be termed an arrest.

The jurisdiction of the court shall attach from the time of such taking into custody. When a child is so taken into custody, such officers shall notify the parent, guardian or custodian of the child to a parent, a responsible adult, a responsible agent of a court approved foster home, group home, facility or program separate from any secure facility upon the written promise, signed by such person, to bring the child to court at a stated time or at such time as the court may direct. Such written promise, accompanied by a written report by the officer, shall be submitted to the Department of Juvenile Placement and Aftercare as soon as possible. If such person shall fail to produce the child as agreed, or upon notice from the court, a summons or a

warrant may be issued for the apprehension of such person or of the child.

(b) When a child is not released pursuant to subsection (a), the officer taking the child into custody shall immediately notify the authorized representative of the South Carolina Department of Juvenile Placement and Aftercare, who shall review the facts in the officer's report or petition and any other relevant facts and determine if there is a need for detention of the child. The officer's written report shall be furnished to the authorized representative of the Department of Juvenile Placement and Aftercare within twenty-four hours from the time the child was taken into custody and such report shall state: (1) the facts of the offense; and, (2) the

reason why the child was not released to the parent. Unless detention is necessary for the protection of the community or to serve the best interest of the child, the child shall be released by the authorized representative of the Department of Juvenile Placement and Aftercare to the custody of his parents or other responsible adult upon their written promise to bring the child to the court at a stated time or at such time as the court may direct. Provided, if the offense for which the child was taken into custody would be a felony the child may only be released by the authorized representative of the Department of Juvenile Placement and Aftercare with the consent of the officer who took the child into custody.

(c) No child shall be trans-

ported in any police vehicle which also contains adults under arrest. No child shall at any time be placed in a jail or other place of detention for adults, but shall be placed in a room or ward entirely separate from adults.

(d) Peace officer's records of children shall be kept separate from records of adults and shall not be open to public inspection, and shall be open to inspection only by such governmental agencies as authorized by the judge.

When the authorized representative of the Department of Juvenile Placement and Aftercare determines that detention is necessary, he shall make a diligent effort to place the child in an approved home, facility or program separate from any secure facility, when such alternatives are appropriate and

available. The Department of Juvenile Placement and Aftercare shall provide to the court a list of appropriate facilities to be utilized for such placement. When the Department of Juvenile Placement and Aftercare determines that a secure facility is necessary, a child may only be detained in a facility which has sight and sound separation from adults. The Department of Juvenile Placement and Aftercare shall develop specific written criteria to use in determining: (1) whether detention is necessary for the protection of the community to insure an orderly court process or to serve the best interest of the child, and (2) whether a secure or nonsecure facility is appropriate for detention of the child. The Department of Juvenile Placement and Aftercare shall also evaluate these criteria using accepted

research methods.

After January 1, 1982, a child who is taken into custody because of a violation of law which would not be a criminal offense under the laws of this State if committed by an adult shall not be placed in a detention facility.

If the authorized representative of the Department of Juvenile Placement and Aftercare has not released the child to the custody of his parents or other responsible adult, the court shall hold a detention hearing within forty-eight hours from the time the child was taken into custody, excluding Sundays and holidays, in accordance with rules of practice in a family court. At this hearing, the authorized representative of the Department of Juvenile Placement and Aftercare shall submit to the court a written report stating the facts surrounding the case and a

recommendation as to the child's continued detention pending the adjudicatory and dispositional hearings.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981; 1981 Act No. 178 Part II Section 36, eff July 29, 1981.

Section 20-7-610. Emergency protective custody.

(A) A law enforcement officer may take a child into protective custody without the consent of parents, guardians or others exercising temporary or permanent control over the child if:

(1) He has probable cause to believe that by reason of abuse or neglect, there exists an imminent danger to the child's life or physical safety.

(2) Parents, guardians or

others exercising temporary or permanent control over the child are unavailable or do not consent to the child's removal, from their custody.

(3) There is not time to apply for a court order pursuant to Section 20-7-736.

(B) When an officer takes custody of a child under this section he shall transport the child to a place previously designated for this purpose by the Family Court or the appropriate judicial circuit. In no case shall the place designated be a facility for the detention of criminal or juvenile offenders.

(C) When an officer takes custody of a child under this section he shall immediately notify the appropriate local child protective service agency and Family Court of the circuit and

shall make every reasonable effort to notify the parent, guardian or other person exercising temporary or permanent control over the child of the place of custody. The notification shall be in writing and shall include notice of the right to a hearing and right to counsel pursuant to this chapter.

(D) The local child protective service agency shall, upon such notification, commence a child protective investigation, including immediate attention to the protection of other children in the home, or other setting where the child was found. The agency shall then initiate a removal proceeding pursuant to Section 20-7-736 on or before the next working day in the appropriate Family Court. The Family Court shall schedule a

pretrial hearing pursuant to the provisions of Section 20-7-736 to be held within ten days of the initiation of the proceedings. At the pretrial hearing, the Court shall undertake to fulfill the requirements of Section 20-7-110 shall consider such matters as will promote a fair and expeditious trial, including a prima facie review of any emergency action taken or initiated in behalf of the child. The hearing to determine whether removal of custody is needed, pursuant to Section 20-7-736, shall be held within thirty days of the date of receipt of the removal petition.

(E) The Family Court may order ex parte that a child be taken into emergency protective custody without the consent of parents, guardians or others exercising

temporary or permanent control over the child if:

(1) The Family Court judge determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the child's life or physical safety; and

(2) Parents, guardians or others exercising temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.

(F) If the court issues such an order it shall schedule a pretrial hearing pursuant to the provisions of Section 20-7-736 and pursuant to the requirements of subsection (D) within ten days after the child was placed in custody.

(G) During the pendency

of the removal proceeding, any child place pursuant to this section shall remain in such placement until removal proceedings have been concluded.

HISTORY: 1981 Act No 71,
Section 1
eff May 19, 1981.

Section 20-7-620. Temporary detention of children.

Provisions shall be made for a detention home or homes for the temporary detention of children, to be conducted by the court, or, subject to the approval and supervision of the court, by other approppriate public agency; or the court may arrange for the use of private homes for such detention, subject to supervision of the court or other agency, or may arrange with any institution or agency to receive for temporary care and custody children

within the jurisdiction of the court.

Section 20-7-630. Juvenile intake and probation services; review of recommendations as to intake; secrecy of files.

Beginning July 1, 1978, the South Carolina Department of Juvenile Placement and Aftercare shall provide intake and probation services for juveniles brought before the family courts of this State and for persons committed or referred to the Department of Youth Services in cooperation with all local officials or agencies concerned. All recommendations by the Department of Juvenile Placement and Aftercare as to intake shall be reviewed by the office of the solicitor in the circuit concerned and the final determination as to whether or not the juvenile shall be prosecuted in family court shall be made by the solicitor or

of his authorized assistant. Statements of the juvenile contained in the Department of Juvenile Placement and Aftercare files shall not be furnished to the solicitor's office as part of the intake review procedure nor shall the solicitor's office be privy to such statements in connection with its intake review.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

SUBARTICLE 7

INTERVENTION BY CHILD WELFARE AGENCIES

SEC.

20-7-640. Duties of State Department of Social Services.

20-7-650. Duties of local child protective agency.

20-7-660. Information, training,

and publicity.

20-7-670. Institutional abuse and neglect.

20-7-680. Central registry.

20-7-690. Confidentiality of reports and records, penalties.

20-7-700. (Renumbered).

20-7-710. (Renumbered).

20-7-720. (Renumbered).

20-7-730. (Renumbered).

Section 20-7-640. Duties of State Department of Social Services.

(A) The Department of Social Services may maintain a toll-free number available to persons throughout the State for the referral of family-related problems, including:

(1) The reporting of known or suspected cases of child abuse or neglect.

(2) Other problems of a nature which may affect the stability of

family life.

Such telephone service shall operate continuously.

Upon receipt of a call involving suspected abuse or neglect, the Department of Social Services shall transmit the full contents of the report to the appropriate local child protective service agency. Immediately upon transmitting the report the Department of Social Services shall destroy the contents of the suspected report.

Upon receipt of a call involving other problems, of a nature which may affect the stability of family life, the Department of Social Services shall refer the call to the appropriate local child protective service agency or other service agency where appropriate.

(B) The Department of Social Services shall have within it a separate organizational unit administered within the Department with qualified staff and resources sufficient to fulfill the purposes and functions assigned to it by this article.

(C) State Department of Social Services responsibilities shall include, but not be limited to: assigning and monitoring initial child protection responsibility through periodic review of services offered throughout the State; assisting in the diagnosis of child abuse and neglect; coordinating referrals of known or suspected child abuse and neglect; measuring the effectiveness of existing child protection programs and facilitating research, planning and program development; and

establishing and monitoring a state-wide central registry for child abuse and neglect as hereinafter provided.

(D) The County Department of Social Services in each county is designated as the Child Protective Service Agency, whose duties are set forth in Section 20-7-650. The county in which the child resides shall be the legal place of venue; provided, that in conjunction with the powers enumerated in this section, each County Board of Social Services shall appoint an advisory board to be composed of resident professionals in the county in which the child resides in the fields of medicine, including nurses, education, health, social workers, members of the clergy, and law enforcement officials, if available for the purpose of determining the course of protective action to be taken by the County

Department of Social Services. These recommendations are to be deemed advisory only. These appointments to the advisory board shall be made in a nondiscriminatory manner.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

Section 20-7-650. Duties of local child protective agency.

(A) It is the purpose of this section to encourage the voluntary acceptance of any service offered by the child protective service agency in connection with child abuse and neglect, or any other problem of a nature affecting the stability of family life.

(B) The local child protective service agencies shall be adequately staffed with persons trained in the investigation of suspected child abuse

and neglect and in the provision of services to abused and neglected children and their families.

(C) Within twenty-four hours of the receipt of a report of suspected child abuse or neglect, the agency shall commence an appropriate and thorough investigation to determine whether a report of suspected child abuse or neglect is "indicated" or "unfounded". The findings shall be made no later than sixty days from the receipt of the report. In conducting the investigation if the facts so warrant the agency investigator may petition the Family Court of the appropriate judicial circuit for a warrant to inspect the premises and condition of the child subject of the report. The Family Court shall issue the inspection warrant upon probable

cause to believe the child is abused or neglected, as defined by this article.

(D) Indicated findings shall be based upon a finding of the facts available to the agency that abuse or neglect is more likely than not to have occurred; whenever the facts available to the agency indicate a lesser finding, determinations shall be deemed "unfounded". Indicated findings shall include a description of the services being provided the child and those responsible for his care, as well as all relevant dispositional information.

(E) Copies of indicated investigations of abuse and neglect shall be communicated immediately to the statewide Central Registry. The agency shall maintain a local registry and reports of child abuse shall be maintained in one of three categories:

Suspected, Unfounded or Indicated. All initial reports shall be deemed suspected. Reports of suspected abuse and neglect shall be maintained for no more than sixty days after the report was received by the agency. On or before the expiration of that time, they shall be converted into either unfounded or indicated reports, pursuant to the agency's investigation.

(1) Indicated reports shall be maintained on the central and local registries only when accompanied by supplemental information as required under subsection (D).

(2) Unfounded reports shall be classified "Unfounded by reason of insufficient evidence."

(3) If no finding has been made by the agency after sixty days from the date a report was received, it shall be classified "Unfounded

for want of an investigation."

(F) The names, addresses and all other identifying characteristics of all persons named in all unfounded reports shall be destroyed one year from the date that the last report has been determined to be unfounded; provided, however, that all information in any such report which is unnecessary for auditing purposes shall be destroyed immediately upon a determination that such report is unfounded and the remaining information shall be kept confidential except for auditing purposes. The names, addresses, birth dates and all other identifying characteristics of all persons named in indicated reports shall be destroyed seven years from the date services are terminated.

(G) The local child protective service agency shall be charged with

providing, directing or coordinating the appropriate and timely delivery of services to children found to be abused or neglected and those responsible for their care or others exercising temporary or permanent control over such children. "Services" shall not be construed to include emergency protective custody provided for in Section 20-7-736.

(H) Where the agency initiates protective services in cases of indicated physical, mental or sexual abuse, it shall notify the Family Court of the jurisdiction of the services offered within one week after the initiation of such services. The Family Court shall schedule a hearing within ninety days after receipt of the notice to determine:

(1) Whether the agency had reasonable cause to initiate the

protective services offered.

(2) Whether the services being offered are reasonable in light of the agency's justification for intervention.

(3) In all proceedings under this section the agency shall have the burden of proof by a preponderance of the evidence, except in cases where the agency has alleged mental injury, in which case the evidence must be clear and convincing.

(I) In cases where a report has been filed with the Central Registry, the outcome of these proceedings shall be communicated immediately by the agency to the Central Registry.

(J) If at any time after the initiation of protective services by the agency those receiving services indicate a refusal to cooperate, the agency shall withdraw. If the facts so warrant, the agency may petition

the Family Court to invoke the jurisdiction of the court under the Family Court Act to intervene, but in no case shall the agency threaten such action to coerce participation.

(K) The agency shall cooperate with law enforcement agencies and the circuit solicitor within the area it serves and establish such procedures as it deems necessary to facilitate the referral of child protection cases to the child protective services agency. Where the facts indicating abuse or neglect also appear to indicate a violation of criminal law, the agency shall notify the appropriate law enforcement agency of those facts for police investigation.

(L) The agency shall actively seek the cooperation and involvement of all local public and private institutions, groups, and programs

concerned with matters of child protection and welfare within the area it serves.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

Section 20-7-660. Information training and publicity.

(A) The Department of Social Services Protective Services and the local child protective services agencies shall, on a continuing basis, inform all persons required to report under this article of the nature, problem and extent of child abuse and neglect and of their duties and responsibilities in accordance with this article. The Department of Social Services and local agencies shall also, on a continuing basis, conduct training programs for local agency staffs as well as appropriate training for persons required to report under this article.

(B) The Department of Social Services Protective Services and the local child protective services agencies shall, on a continuing basis, inform the public of the nature, problem and extent of the child abuse and neglect and of the remedial and therapeutic services available to children and their families. The Department of Social Services and the local agencies shall also encourage families to seek help consistent with Section 20-7-500.

(C) The Department of Social Services Protective Services and the local child protective services agencies shall, on a continuing basis, actively publicize the appropriate telephone numbers to receive reports of suspected child abuse and neglect, including the twenty-four hour, statewide, toll-free telephone service and respective numbers of the local

child protective services agencies.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

Section 20-7-670. Institutional abuse and neglect.

(A) The Department of Social Services Child Protective Services shall be empowered to receive and investigate reports of institutional abuse and neglect and shall promulgate regulations consistent with this authority to investigate such reports and take remedial action, if necessary. In no case shall the Department of Social Services have responsibility for investigating allegations of abuse and neglect in institutions operated by the Department of Social Services.

The Department of Social Services shall take whatever steps it deems necessary to inform

potential reporters of institutional abuse and neglect of its responsibilities under this section.

(B) Subject to the provisions of subsection (A), the State Law Enforcement Division is empowered to receive and investigate reports of institutional abuse and neglect alleged to have occurred in any institution operated by the Department of Social Services and may promulgate regulations consistent with this authority to investigate such reports and take remedial action, if necessary.

The agency shall take whatever steps it deems necessary to inform potential reporters of institutional abuse and neglect of its responsibilities under this section.

HISTORY: 1981 Act No. 71, Section 1, eff may 19, 1981.

Section 20-7-680. Central registry.

(A) The purpose of this section is to establish a system for the identification of abused and neglected children and those who are responsible for their care, to provide a system for the coordination of reports concerning abused and neglected children and to provide data for determining the incidence and prevalence of child abuse and neglect in this State.

(B) The State Department of Social Services shall maintain a Central Registry of Child Abuse and Neglect within the Department of Social Services child protective services unit. The registry shall receive and maintain indicated reports of child abuse and neglect from county departments of social services and from local child

protective services agencies and it shall transmit information to authorized persons and agencies as provided in Section 20-7-690.

(C) Local child protective service agencies shall transmit monthly any data required by the Department of Social Services for purposes of statistical analysis and data gathering, subject to the limitations imposed on identifying characteristics contained in subsections (E) and (F) of Section 20-7-650.

(D) The Department of Social Services shall furnish annually to the Governor and the General Assembly a report on the incidence and prevalence of child abuse and neglect in South Carolina, the effectiveness of services provided throughout the State to protect children from such harm and any other data deemed instructive.

(E) The names, addresses, birthdates, and all other identifying characteristics of all persons named in indicated reports contained in the Registry shall be destroyed seven years from the date services are terminated.

HISTORY: 1981 Act No. 71 Section 1. eff may 19. 1981.

Section 20-7-690. Confidentiality of reports and records; penalties.

(A) All reports made pursuant to this article maintained by the State Department of Social Services, local child protective service agencies and the Central Registry of Child Abuse and Neglect shall be confidential. Any person who disseminates or permits the unauthorized dissemination of such information shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or be imprisoned for not more

than six months, or both.

(B) Information contained in reports described in subsection (A) shall not be made available to any individual or institution except:

(1) Appropriate staff of the State Department of Social Services, local child protective services agencies and multidisciplinary evaluation teams empaneled by the agencies and law enforcement agencies investigating suspected cases of abuse and neglect.

(2) Any person who is the subject of a report, subject to the qualifications provided in subsection (C).

(3) Family Courts conducting child abuse and neglect or child protective proceedings.

(4) Any person engaged in a bona fide research purpose, with

written permission of the Commissioner of the State Department of Social Services, but no information regarding the names, addresses and other identifying characteristics of subjects of the report shall be made available to the researcher.

(5) Any person appointed as a child's guardian ad litem pursuant to Section 20-7-110.

(C) Any person who is the subject of a report made pursuant to this article shall be immediately notified of the fact that his name has been recorded by the State Department of Social Services, the local child protective services agency and, if applicable, the Central Registry of Child Abuse and Neglect. He shall also be informed of the findings of the investigation and whether or not his name has been destroyed in accordance with this

article. Any person who is the subject of a report shall be informed of his right to inspect the report and any substantiating data or evidence and his right to challenge any part of its contents. The only details of the report which shall be withheld from the subject's knowledge or inspection are the name, address, occupation and all other identifying characteristics of the reporter.

(D) For the purpose of this section, "any person who is the subject of a report" shall mean the child and any person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report or finding.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981.

PROCEDURES FOR FAMILY COURTS

SUBARTICLE 1

ABUSED, NEGLECTED AND

DELINQUENT CHILDREN

SEC.

20-7-735. (Renumbered).

20-7-736. Jurisdiction of family court under article; removal proceedings; procedures.

20-7-740. Preliminary inquiry and informal action by courts; contents, verification, and filing of petition; investigation; notice.

20-7-745. Service of summons, process of service.

20-7-750. Failure to obey summons or process: issuance of warrant.

20-7-755. Conduct of hearings.

20-7-760. Rules for conduct of hearings; evidence; adjournment;

temporary order for support.

20-7-765. (Renumbered).

20-7-770. (Renumbered).

20-7-775. (Renumbered)

20-7-780. Records, confidential information; names and pictures of children shall not be made public; fingerprints.

Section 20-7-736. Jurisdiction of family court under article; removal proceedings; procedures.

(A) The Family Court shall have exclusive jurisdiction over all proceedings held pursuant to this article.

(B) Upon investigation of a report received under Section 20-7-650 or at any time during the delivery of services by the agency, the local child protective services agency may petition the Family Court in its jurisdiction to remove the child from

custody of the parent or guardian when the agency has probable cause to believe removal is necessary to protect the child's health or welfare.

(C) The petition shall contain a full description of the reasons why the child cannot be protected adequately in the custody of the parent or guardian, including a descriptioin of the condition of the child, any previous efforts to work with the parent or guardian, in-home treatment programs which have been offered and proven inadequate and the attitude of the parent or guardian towards placement of the child in an alternative setting. The petition shall also contain a statement of the harms the child is likely to suffer as a result of removal and a description of the steps that will be taken to minimize the harm to the child

that may result upon removal.

(D) Upon receipt of a removal petition under this section, the Family Court shall schedule a hearing to be held within thirty days of the date of receipt to determine whether removal is necessary.

The Family Court shall notify the parent or guardian of the hearing by delivering a copy of the petition, together with a notice of the hearing, which shall include the date and time of the hearing and an explanation of the right of the parent or guardian to have an attorney under Section 20-7-110. The Family Court shall effect delivery at least twenty-four hours prior to the hearing. The respondent shall be allowed to seek leave of court for a continuation of not less than forty-eight hours.

(E) A child shall not be removed from the custody of the parent or guardian unless the court finds that:

(1) The child has been physically injured as defined in Section 20-7-490 and there is a preponderance of the evidence that the child cannot be protected from further physical injury without being removed.

(2) the child has been endangered as otherwise defined in Section 20-7-490 and there is clear and convincing evidence that the child cannot be protected from further harm of the type justifying intervention without being removed.

(3) There is an alternative placement available but in no case shall the placement be a facility for detention of criminal or juvenile

offenders.

(F) The petition for removal may include a petition for termination of parental rights under the jurisdiction conferred on the Family Court by the Family Court Act.

HISTORY: 1981 Act No. 71, Section 1, eff May 19, 1981; 1982 Act no. 398, Section 9, eff June 7 1982.

CHAPTER 10 (new)

Child Protection Act of 1977

SEC.

20-10-10. Short title.

20-10-20. Definitions.

20-10-30. Purpose.

20-10-40. Persons or families needing assistance encouraged to seek it.

20-10-50. Persons to report.

20-10-60. Mandatory reporting to a medical examiner or coroner; postmortem examination.

20-10-70. Photographs and x-rays.

20-10-80. Emergency protective custody.

20-10-90. Immunity from liability.

20-10-100. Abrogation of privileged communication.

20-10-110. Duties of State Department of Social Services.

20-10-120. Duties of the local child protective agency.

20-10-130. Central Registry.

20-10-140. Confidentiality of reports and records; penalties.

20-10-150. Information, training and publicity.

20-10-160. Institutional abuse and neglect.

20-10.170. Removal.

20-10-180. Legal representation.

20-10-190. Penalties.

Section 20-10-10. Short title.

This chapter shall be known as the Child Protection Act of 1977.

Section 20-10-20. Definitions.

When used in this chapter and unless the specific content indicates otherwise:

(A) "Child" means a person under the age of eighteen.

(B) "Abused or neglected child" means a child whose physical or mental health or welfare is harmed or threatened with harm, as defined by items (C) and (D) of this section, by the acts or omissions of his parent, guardian or other person responsible for his welfare.

(C) "Harm" to a child's health or welfare can occur when the parent,

guardian or other person responsible for his welfare:

(1) Inflicts of allows to be inflicted upon the child physical or mental injuries, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which meets each of the following guidelines:

(a) The physical aggression must be administered by a parent or person in loco parentis.

(b) It must be perpetrated for the sole purpose of restraining or correcting the child.

(c) The force or violence of the discipline must be reasonable in manner and moderate in degree.

(d) the force and violence of the discipline must not have brought about permanent or lasting damage to the child.

(c) The behavior of the parent must not be reckless or grossly negligent.

(2) Commits or allows to be committed against the child a sexual offense as defined by the laws of the State.

(3) Fails to provide the child with adequate food, clothing, shelter, education as required under Article 1 of Chapter 65 of Title 59, or health care though financially able to do so or offered financial or other reasonable means to do so. For the purpose of this chapter "adequate health care" includes any medical or nonmedical health care permitted or authorized under state law.

(4) Abandons the child, as defined by Section 20-11-20, Code of Laws of South Carolina, 1976.

(5) Encourages, condones or approves the commission of delinquent

acts by the child and commission of the acts are shown to be the result of the encouragement, condonation or approval.

(D) "Threatened harm" means a substantial risk of harm, as defined by item (C).

(E) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home, institution or agency, or other person legally responsible for the child's welfare in a residential setting.

(F) "Physical injury" means death, disfigurement or impairment of any bodily organ.

(G) "Mental injury" means a substantial impairment of the intellectual, psychological or emotional capacity of a child as evidenced by inhumane or unconscionable

acts and conduct. Provided, nothing herein shall be construed as prohibiting a person responsible for a child's welfare from imposing reasonable restrictions deemed necessary by such person for the intellectual, psychological or emotional well-being of the child by any of the following means or methods:

(1) Restrictions relating to attendance at amusements, concerts, social events or activities, or theaters.

(2) restrictions on amount of exposure to secular activities such as television, extra-curricular school activities or community recreational activities.

(3) instructions, directions, or mandates relating to public or private elementary and secondary education or attendance at churches

or other places of religious worship.

(H) "Institutional child abuse and neglect" means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is the employee of a public or private residential home, institution or agency.

(I) "Protective Services Unit" means the unit established within the Department of Social Services which shall have prime responsibility for state efforts to strengthen and improve the prevention, identification and treatment of child abuse and neglect.

(J) "Subject of the report" means any person reported under this chapter, including any child or parent, guardian or other person responsible for the child's welfare.

(K) "Suspected report" means all initial reports of child abuse or neglect received pursuant to this

chapter.

(L) "Unfounded report" means a report made pursuant to this chapter for which there is not probable cause to believe that the child is abused or neglected. For purposes of this chapter, it is presumed that all reports are unfounded unless the local child protective service agency determines otherwise.

(M) "Indicated report" means a report of child abuse or neglect supported by facts which warrant a finding that abuse or neglect is more likely than not to have occurred.

(N) "Probable cause" means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

(O) "Local child protective service agency" means the agency in a county or contiguous counties having prime responsibility for local efforts to strengthen and improve the prevention, identification and treatment of child abuse and neglect.

(P) "Child protective investigation" means any inquiry conducted by the local child protective service agency in response to a report of child abuse or neglect made pursuant to this chapter.

HISTORY: 1977 Act No. 187 Section 4; 1978 Act No. 497 Section 1, eff May 5, 1978.

Section 20-10-30. Purpose.

Recognizing that abused and neglected children in South Carolina need protection, it is the purpose of this chapter to save them from injury and harm by establishing an effective

reporting system and encouraging the reporting of children in need of protection; by establishing an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate; by establishing fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members and by establishing an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.
HISTORY: 1977 Act No. 187 Section 2.

Section 20-10-40. Persons or families needing assistance encouraged to seek it.

Any person seeking assistance in

meeting child care responsibilities may use the services and facilities established by this chapter, including the single statewide telephone number and local child protective services where available. Such persons shall be referred to appropriate community resources or agencies, nothwithstanding whether the problem presented involves child abuse or neglect as defined by this chapter.

HISTORY: 1977 act No 187 Section 3.

Section 20-10-50.

(A) Any physician, nurse, dentist, optometrist, medical examiner, or coroner, or any other medical, mental health, or allied health professional, Christian Science practitioner, religious healer, school teacher or counselor, social or public assistance worker, child care worker in any day care center or child

caring institution, police or law enforcement officer or any judge having reason to believe that a child's physical or mental health has been or may be adversely affected by abuse or neglect is required to report or cause a report to be made in accordance with this section.

(B) Except as provided in (A) of this section, any other person who has reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect may report in accordance with this section.

(C) Reports of child abuse or neglect made pursuant to this section may be made orally, by telephone or otherwise to the county department of social services, or in the alternative, to a law enforcement agency in the county where the child resides or is found.

(1) Where reports are made pursuant to this section to a law enforcement agency, it shall notify the county department of social services of its response to the report at the earliest possible time.

(2) Where a county or contiguous counties have established local child protective services, pursuant to Section 20-10-20, the county department of social services shall immediately transfer reports pursuant to this section to the service.

HISTORY: 1977 Act No 187 Section 5, 1978 Act No. 497 Section 2, eff May 5, 1976.

Section 20-10-60. Mandatory reporting to a medical examiner or coroner, postmortem examinations.

Any person required under Section 20-10-50(A) to report cases of suspected child abuse or neglect, including

workers of the local child protective service agency, who has reason to believe that a child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner or coroner. Any other person who has reason to believe that a child has died as a result of child abuse or neglect may report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his findings to the appropriate law enforcement agency, circuit solicitor's office, the local child protective service agency or county department of social services and, if the institution making a report is a hospital, to the hospital.

HISTORY: 1977 Act No 187 Section 6.

Section 20-10-70. Photographs and

x-rays.

Any person required to report under Section 20-10-50 may take, or cause to be taken color photographs of the areas of trauma visible on a child who is the subject of a report, and, if medically indicated, cause to be performed a radiological examination of the child without the consent of the child's parents or guardians. All photoographs, negatives, and copies of them shall be sent to the appropriate local child protective service agency or county department of social services at the time a report pursuant to Section 20-10-50 is made, or as soon thereafter as possible.

HISTORY: 1977 Act No 187 Section 7; 1978 Act No. 497 Section 3, eff May 5, 1978.

Section 20-10-80. Emergency protective

custody.

(A) A law enforcement officer may take a child into protective custody without the consent of parents, guardians or others exercising temporary or permanent control over the child if:

(1) He has probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the child's life or physical safety.

(2) Parents, guardians or others exercising temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.

(3) There is not time to apply for a court order pursuant to Section 20-10-70.

(B) When an officer takes custody of a child under this section he shall transport the child to a place

previously designated for this purpose by the Family Court of the appropriate judicial circuit. In no case shall the place designated be a facility for the detention of criminal or juvenile offenders.

(C) When an officer takes custody of a child under this section he shall immediately notify the appropriate local child protective service agency and Family Court of the circuit and shall make every reasonable effort to notify the parent, guardian or other person exercising temporary or permanent control over the child of the place of custody. The notification shall be in writing and shall include notice of the right to a hearing and right to counsel pursuant to this chapter.

(D) The local child

protective service agency shall, upon such notification, commence a child protective investigation, including immediate attention to the protection of other children in the home, or other setting where the child was found. The agency shall then initiate a removal proceeding pursuant to Section 20-10-170 on or before the next working day in the appropriate Family Court. The Family Court shall schedule a pretrial hearing pursuant to the provisions of Section 20-10-170 to be held within ten days of the initiation of the proceedings. At the pretrial hearing, the Court shall undertake to fulfill the requirements of Section 20-10-180 and shall consider such matters as will promote a fair and expeditious trial, including a prima facie review of any emergency action taken or initiated in behalf of the child. The hearing to determine whether removal

of custody is needed, pursuant to Section 20-10-170, shall be held within thirty days of the date of receipt of the removal petition.

(E) The Family Court may order ex aprte that a child be taken into emergency protective custody without the consent of parents, guardians or others exercising temporary or permanent control over the child if:

(1) The Family Court judge determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the child's life or physical safety: and

(2) Parents, guardians or others exercising temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.

(F) If the court issues such an order it shall schedule a pretrial hearing pursuant to the provisions of Section 20-10-170 and pursuant to the requirements of subsection (D) within ten days after the child was placed in custody.

(G) During the pendency of the removal proceeding, any child placed pursuant to this section shall remain in such placement until removal proceedings have been conducted.

HISTORY: 1977 Act No. 187 Section 8; 1978 Act No. 497 Section 9, eff May 5, 1978; 1980 Act No. 498, eff June 11, 1980.

Section 20-10-90. Immunity from liability.

Any person required or permitted to report pursuant to this chapter or who participates in judicial proceedings resulting therefrom, acting in good

faith, shall be immune from civil and criminal liability which might otherwise result by reason of such actions. In all such civil or criminal proceedings good faith shall be rebuttably presumed.

HISTORY: 1977 Act No 187 Section 9.

Section 20-10-100. Abrogation of privileged communication.

The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client or priest and penitent, is abrogated and shall not constitute grounds for failure to report or the exclusion of evidence in any civil child protective proceeding resulting from a report pursuant to this chapter.

HISTORY: 1977 Act No. 187 Section 10.

Section 20-10-110. Duties of the State Department of Social Services.

(A) The Department of Social Services may maintain a toll-free number available to persons throughout the State for the referral of family related problems, including:

(1) The reporting of known or suspected cases of child abuse or neglect.

(2) Other problems of a nature which may affect the stability of family life.

Such telephone service shall operate continuously.

Upon receipt of a call involving suspected abuse or neglect, the Department of Social Services shall transmit the full contents of the report to the appropriate local child protective service agency. Immediately upon transmitting the report, the Department of Social

Services shall destroy the contents of the suspected report.

Upon receipt of a call involving other problems of a nature which may afect the stability of family life, the Department of Social Services shall refer the call to the appropriate local child protection service agency or other service agency where appropriate.

(B) The Department of Social Services shall have within it a separate organizational unit administered within the Department with qualified staff and resources sufficient to fulfill the purposes and functions assigned to it by this chapter.

(C) State Department of Social Services responsibilities shall include, but not be limited to: assigning and monitoring initial child protection responsibility through periodic review

of services offered throughout the State; assisting in the diagnosis of child abuse and neglect; measuring the effectiveness of existing child protection programs and facilitating research, planning and program development; and establishing and monitoring a statewide central registry for child abuse and neglect as hereinafter provided.

(D) The County Department of Social Services in each county is designated as the Child Protective Service Agency, whose duties are set forth in Section 20-10-120. The county in which the child resides shall be the legal place of venue, provided, that in conjunction with the powers enumerated in this section, each County Board of Social Services shall appoint an advisory board to be composed of resident professionals in the county in which the child resides

in the fields of medicine, including nurses, education, health, social workers, members of the clergy and law enforcement officials, if available for the purpose of determining the course of protective action to be taken by the County Department of Social Services. These recommendations are to be deemed advisory only. These appointments to the advisory board shall be made in a nondiscriminatory manner.

HISTORY: 1977 Act No 187 Section 11.

Section 20-10-120. Duties of the local child protective agency.

(A) It is the purpose of this section to encourage the voluntary acceptance of any service offered by the child protective service agency in connection with child abuse and

neglect, or any other problem of a nature affecting the stability of family life.

(B) The local child protective service agencies shall be adequately staffed with persons trained in the investigation of suspected child abuse and neglect and in the provision of services to abused and neglected children and their families.

(C) Within twenty-four hours of the receipt of a report of suspected child abuse or neglect, the agency shall commence an appropriate and thorough investigation to determine whether a report of suspected child abuse or neglect is "indicated" or "unfounded". The finding shall be made no later than sixty days from the receipt of the report. In conducting the investigation if the facts so warrant the agency investigator may petition the Family Court of the appropriate judicial

circuit for a warrant to inspect the premises and condition of the child subject of the report. The Family Court shall issue the inspection warrant upon probable cause to believe the child is abused or neglected, as defined by this chapter.

(D) Indicated findings shall be based upon a finding of the facts available to the agency that abuse or neglect is more likely than not to have occurred; whenever the facts available to the agency indicate a lesser finding, determinations shall be deemed "unfounded". Indicated findings shall include a description of the services being provided the child and those responsible for his care, as well as all relevant dispositional information.

(E) Copies of indicated

investigations of abuse and neglect shall be communicated immediately to the statewide Central Registry. The agency shall maintain a local registry and reports of child shall be maintained in one of three categories: Suspected, Unfounded or Indicated. All initial reports shall be deemed suspected. Reports of suspected abuse and neglect shall be maintained for no more than sixty days after the report was received by the agency. On or before the expiration of that time, they shall be converted into either unfounded or indicated reports, pursuant to the agency's investigation.

(1) Indicated reports shall be maintained on the central and local registries only when accompanied by supplemental information as required under subsection (D).

(2) Unfounded reports shall be classifed "Unfounded by reason of

insufficient evidence."

(3) If no finding has been made by the agency after sixty days from the date a report was received, it shall be classified "Unfounded for want of an investigation."

(F) The names, addresses and all other identifying characteristics of all persons named in all unfounded reports shall be destroyed one year from the date that the last report has been determined to be unfounded; provided, however, that all information in any such report which is unnecessary for auditing purposes shall be destroyed immediately upon a determination that such report is unfounded and the remaining information shall be kept confidential except for auditing purposes. The names, addresses, birth dates and all other identifying characteristics of all persons named

in indicated reports shall be destroyed seven years from the date services are terminated.

(G) The local child protective service agency shall be charged with providing, directing or coordinating the appropriate and timely delivery of services to children found to be abused or neglected and those responsible for their care or others exercising temporary or permanent control over such children. "Services" shall not be construed to include emergency protective custody provided for in Section 20-10-170.

(H) Where the agency initiates protective services in cases of indicated physical, mental or sexual abuse, it shall notify the Family Court of the jurisdiction of the services offered within one week after the initiation of such services. The Family Court shall schedule a

hearing within ninety days after receipt of the notice to determine:

(1) Whether the agency had reasonable cause to initiate the protective services offered.

(2) Whether the services being offered are reasonable in light of the agency's justification for intervention.

(3) In all proceedings under this section the agency shall have the burden of proof by a preponderance of the evidence, except in cases where the agency has alleged mental injury, in which case the evidence must be clear and convincing.

(I) In cases where a report has been filed with the Central Registry, the outcome of these proceedings shall be communicated immediately by the agency to the Central Registry.

(J) If at any time after the

initiation of protective services by the agency those receiving services indicate a refusal to cooperate, the agency shall withdraw. If the facts so warrant, the agency may petition the Family Court to invoke the jurisdictio of the court under the Family Court Act to intervene, but in no case shall the agency threaten such action to coerce participation.

(K) The agency shall cooperate with law enforcement agencies and the circuit solicitor within the area it serves and establish such procedures as it deems necessary to facilitate the referral of child protection cases to the child protective services agency. Where the facts indicating abuse or neglect also appear to indicate a violation of criminal law, the agency shall notify the appropriate law enforcement agency of those facts for police investigation.

(L) The agency shall actively

seek the cooperation and involvement of all local public and private institutions, groups, and programs concerned with matters of child protection and welfare within the area it serves.

HISTORY: 1977 Act No 187 Section 12; 1978 Act No. 497 Section 4, eff May 5, 1978.

Section 20-10-130. Central registry.

(A) The purpose of this section is to establish a system for identification of abused and neglected children and those who are responsible for their care, to provide a system for the coordination of reports concerning abused and neglected children and to provide data for determining the incidence and prevalence of child abuse and neglect in the State.

(B) The State Department of Social Services shall maintain

a Central Registry of Child Abuse and Neglect within the Department of Social Services child protective services unit. The registry shall receive and maintain indicated reports of child abuse and neglect from county departments of social services and from local child protective service agencies and it shall transmit information to authorized persons and agencies as provided in Section 20-10-140.

(C) Local child protective service agencies shall transmit monthly any data required by the Department of Social Services for purposes of statistical analysis and data gathering, subject to the limitations imposed on identifying characteristics contained in Section 20-10-120 (E) and (F).

(D) The Department of

Social Services shall furnish anually to the Governor and the General Assembly a report on the incidence and prevalence of child abuse and neglect in South Carolina, the effectiveness of services provided throughout the State to protect children from such harm and any other data deemed instructive.

(E) The names, addresses, birthdates, and all other identifying characteristics of all persons named in indicated reports contained in the Registry shall be destroyed seven years from the date services are terminated.

HISTORY: 1977 Act No. 187 Section 13; 1978 Act No. 497 Section 5, eff May 5, 1978.

Section 20-10-140. Confidentiality of reports and records; penalties.

(A) All reports made pursuant

to this chapter maintained by the State Department of Social Services, local child protective service agencies and the Central Registry of Child Abuse and Neglect shall be confidential. Any person who disseminates or permits the unauthorized dissemination of such information shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or be imprisoned for not more than six months or both.

(B) Information contained in reports described in subsection (A) shall not be made available to any individual or institution except:

(1) Appropriate staff of the State Department of Social Services, local child protective services agencies and multidisciplinary evaluation teams empaneled by the agencies and law enforcement agencies investi-

gating suspected cases of abuse and neglect.

(2) Any person who is the subject of a report, subject to the qualifications provided in sub-section (C).

(3) Family Courts conducting child abuse and neglect or child protective proceedings.

(4) Any person engaged in a bona fide research purpose, with written permission of the Commissioner of the State Department of Social Services, but no information regarding the names, addresses and other identifying characteristics of subjects of the report shall be made available to the researcher.

(5) Any person appointed as a child's guardian ad litem pursuant to this chapter.

(C) Any person who is the

subject of a report made pursuant to this chapter shall be immediately notified of the fact that his name has been recorded by the State Department of Social Services, the local child protective services agency and, if applicable, the Central Registry of Child Abuse and Neglect. He shall also be informed of the findings of the investigation and whether or not his name has been destroyed in accordance with this chapter. Any person who is the subject of a report shall be informed of his right to inspect the report and any substantiating data or evidence and his right to challenge any parts of its contents. The only details of the report which shall be withheld from the subject's knowledge or inspection are the name, address, occupation and all other identifying characteristics of the reporter.

(D) For the purpose of this section, "any person who is the subject of a report" shall mean the child and any person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report or finding.

HISTORY: 1977 Act No. 187 Section 14; 1978 Act No. 497 Sections 6,11, eff May 5, 1978.

Section 20-10-150. Information, training and publicity.

(A) The Department of Social Services Protective Services and the local child protective services agencies shall, on a continuing basis, inform all persons required to report under this chapter of the nature, problem and extent of child abuse and neglect and of their duties and responsibilities

in accordance with this chapter. The Department of Social Services and local agencies shall also, on a continuing basis, conduct training programs for local agency staff as well as appropriate training for persons required to report under this chapter.

(B) The Department of Social Services Protective Services and the local child protective services agencies shall, on a continuing basis, inform the public of the nature, problem and extent of the child abuse and neglect and of the remedial and therapeutic services available to children and their families. The Department of Social Services and the local agencies shall also encourage families to seek help consistent with Section 20-10-40.

(C) The Department of Social Services Protective Services and the local child protective services agencies shall, on a continuing basis, actively publicize the appropriate telephone numbers to receive reports of suspected child abuse and neglect, including the twenty-four hour, state-wide, toll-free telphone service and respective numbers of the local child protective services agencies.
HISTORY: 1977 Act No. 187 Section 15.

Section 20-10-160. Istitutional abuse and neglect.

(A) The Department of Social Services Child Protective Services shall be empowered to receive and investigate reports of institutional abuse and neglect and shall promulgate regulations consistent with this authority to investigate such reports and take remedial action, if necessary.

In no case shall the Department of Social Services have responsibility for investigating allegations of abuse and neglect in institutions operated by the Department of Social Services.

The Department of Social Services shall take whatever steps it deems necessary to inform potential reporters of institutional abuse and neglect of its reponsibilities under this section.

(B) Subject to the provisions of subsection (A), the State Law Enforcement Divison is empowered to receive and investigate reports of institutional abuse and neglect alleged to have occurred in any institution operated by the Department of Social Services and may promulgate regulations consistent with this authority to investigate such reports and take remedial action, if necessary.

The agency shall take whatever steps it deems necessary to inform potential reporters of institutional abuse and neglect of its reponsibilities under this section.

HISTORY: 1977 Act No. 187 Section 16.

Section 20-10-170. Removal.

(A) The Family Court shall have exclusive jurisdiction over all proceedings held pursuant to this chapter.

(B) Upon investigation of a report received under Sectio 20-10-120, or at any time during the delivery of services by the agency, the local child protective services agency may petition the Family Court in its jurisdiction to remove the child from custody of the parent or guardian when the agency has probable cause to believe removal is necessary to protect the child's health or welfare.

(C) The petition shall contain a full description of the reasons why the child cannot be protected adequately in the custody of the parent or guardian, including a description of the condition of the child, any previous efforts to work with the parent or guardian, in-home treatment programs which have been offered and proven inadequate and the attitude of the parent or guardian towards placement of the child in an alternative setting. The petition shall also contain a statement of the harms the child is likely to suffer as a result of removal and a description of the steps that will be taken to minimize the harm to the child that may result upon removal.

(D) Upon receipt of a removal petition under this section, the Family Court shall schedule a

hearing to be held within thirty days of the date of receipt to determine whether removal is necessary.

(E) A child shall not be removed from the custody of the parent or guardian unless the court finds that:

(1) The child has been physically injured as defined in Section 20-10-20 and there is a preponderance of the evidence that the child cannot be protected from further physical injury without being removed.

(2) The child has been endangered as otherwise defined in Section 20-10-20 and there is clear and convincing evidence that the child cannot be protected from further harm of the type justifying intervention without being removed.

(3) There is an alternative placement available but in no case shall the placement be a facility for

detention of criminal or juvenile offenders.

(F) The petition for removal may include a petition for termination of parental rights under the jurisdiction conferred on the Family Court by the Family Court Act.

HISTORY: 1977 Act No. 187 Section 17; 1978 Act No. 497 Sections 7,8, May 5 1978; 1980 Act No. 497, eff June 11, 1980.

Section 20-10-180. Legal representation.

(A) Any child subject to any judicial proceeding under this chapter may be appointed legal consel and a guardian ad litem by the Family Court. Counsel for the child shall in no case be the same as counsel for the parent, guardian or other person subject to the proceeding or any governmental or social agency involved in the proceeding.

(B) Parents, guardians or other persons subject to any judicial

proceeding under this chapter shall be entitled to legal counsel. Those persons unable to afford legal representation shall be appointed counsel by the Family Court.

(C) The interests of the State and the local child protective services agency shall be represented by the circuit solicitor or his representative in the appropriate judicial circuit in any judicial proceeding under this chapter.

HISTORY: 1977 Act No. 187 Section 18.

Section 20-10-190. Penalties.

Any person required to report a case of child abuse or neglect, or any person required to perform any other functions under this chapter, who knowingly fails to do so, or any person who threatens or attempts to intimidate a witness shall be deemed guilty of a misdemeanor and upon conviction shall be

fined not more than five hundred dollars or be imprisoned for not more than six months, or both.

HISTORY: 1977 Act No. 187 Section 19; 1978 Act No. 497 Section 10, eff May 5, 1978.